IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 28 OF 2003
WITH
CIVIL APPLICATION NO. 26 OF 2003

Smt. Yashoda Eknath Yadav Patil ..Appellant

Vs.

1.Smt. Hausabai Eknath Yadav Patil
and ors. ..Respondents

Mr. U.B. Nighot for appellant.
Mr. A.A. Kumbhakoni for respondent nos.1 and 2.

CORAM: B.H. MARLAPALLE, J.

Date : March 21, 2007.

P.C.:

1. Heard Mr. Nighot the learned counsel for the appellant and Mr. Kumbhakoni the learned counsel for the respndent nos.1 and 2-defendants.

2. The plaintiff had instituted Regular Civil Suit No. 44 of 1993 in the Court of Civil Judge, Junior Division at Satara praying for partition and possession of the suit properties mentioned in paragraph 1A to 1C of the plaint which were claimed to

be the ancestral properties of Eknath Yadav Patil. She further claimed that she was married to Eknath in the year 1951-52 and was co-habiting with him at his house at Saspade. She also admitted that defendant no.1 was the first wife of Eknath and the marriage was solemnised somewhere in 1941-42 but she could not deliver any child and, therefore, Eknath married the plaintiff subsequently. She further admitted that she could not bear any child and on account of his prolonged illness Eknath died on 8/2/1991. Defendant No.2 is the daughter born to defendant no.1 from Eknath and defendant no.3 is the Uncle of Eknath. The learned Joint Civil Judge, Junior Division at Satara by her judgment and order dated 31/8/1995 was pleased to dismiss the suit solely on the ground that the plaintiff could not prove that she was the legally wedded wife of Eknath and, therefore, she could not claim, as of legal right, 1/3rd share in the property of Eknath. The plaintiff, therefore, filed Regular Civil Appeal No. 536 of 1995, which also came to be dismissed by the learned 7th Additional District Judge, Satara vide his judgment and order dated 20/9/2001. The learned Judge of the Lower Appellate

Court referred to section 4 of the Bombay Prevention of Hindu Bigamous Marriage Act, 1946 and held that the same was applicable to the marriage of the plaintiff if it had taken place in the year 1951-52, with Eknath and held that the said marriage was void. Thus, the Lower Appellate Court agreed with the view taken by the trial court that the plaintiff was not entitled, as of her legal right, to claim 1/3rd share in the property of late Eknath.

3. It is required to be noted that the plaintiff failed to adduce any evidence before the trial court that she was a legally wedded wife of Eknath. Under these circumstances, the concurrent view taken by both the courts below does not raise any substantial question of law for the consideration of this court. The law laid down by this court in the case of Ningu Vithu Bamane vs. Sadashiv Ningu Bamane [1986 Mh.L.J. 186] has been referred to and relied upon, in addition to the judgment in the case of Ashok Kumar vs. Smt. Usha Kumari and ors. [AIR 1984 Delhi 347] by both the courts below and rightly so.

4. Hence this appeal fails at the threshold and the same is hereby dismissed in limine. However, the defendants could not dispute the contention of the plaintiff that Eknath lived with her as her husband till his demise on 8/2/1991 and, therefore, it would be desirable that the defendants make some provision for the maintenance of the plaintiff when it is known to them that she had not other support to survive. In her advance age, the defendant no.2 should make some arrangement even in terms of kinds to support the plaintiff. I trust that the defendants will take appropriate steps to look after the plaintiff.

5. Civil Application No. 26 of 2003 does not survive and the same shall stand disposed as such.

(B.H. Marlapalle,J.)